Public Version

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of:	
Determination of Royalty Rates and Terms for Transmission of Sound Recordings by Satellite Radio and "Preexisting" Subscription Services (SDARS III)	Docket No. 16-CRB-0001 SR/PSSR (2018-2022)

SOUNDEXCHANGE'S OPPOSITION TO
SIRIUS XM'S MOTION FOR REHEARING

SoundExchange, Inc. ("SoundExchange") respectfully requests that the Copyright Royalty Judges ("Judges") deny the Motion for Rehearing filed by Sirius XM ("SXM") on December 29, 2017 ("Mot."). Under the Copyright Act, the Judges may order rehearing only in "exceptional cases," 17 U.S.C. § 803(c)(2)(A), and the Judges have consistently emphasized that motions for rehearing are subject to a "strict standard."[1] SXM's Motion does not come close to satisfying these high standards.

ARGUMENT

I. SXM's Belated ARPU Calculation Should Be Rejected.

The Judges set SXM's royalty rate at 15.5% of its Gross Revenues. To arrive at that rate, the Judges divided the per-subscriber opportunity cost of licensing SXM [[redacted]] by SXM's royalty-based ARPU [[redacted]]. Determination at 57. In so doing, the Judges adopted the *only* royalty-based ARPU figure offered into evidence by SXM during the course of this two-year proceeding. SXM now asserts that, by using the same ARPU number used by SXM's own

[1] *See, e.g.*, *Order Denying in Part SoundExchange's Motion for Rehearing and Granting in Part Requested Revisions to Certain Regulatory Provisions*, Docket No. 14-CRB-0001-WR (2016-2020), at 2 (Feb 10, 2016) ("*Web IV* Denial").

economic expert, the Judges committed clear error and imposed manifest injustice. For reasons set forth below, SXM is wrong.

A. Because SXM Did Not Offer Its Current ARPU Calculation Before The Judges' Determination, It Cannot Now Claim Clear Error.

In deriving their royalty rate, the Judges credited Mr. Orszag's calculation of SXM's royalty-based ARPU. As Mr. Orszag explained, he arrived at [redacted] by relying on SXM's own reporting to SoundExchange of SXM's monthly Gross Revenues. Trial Ex. 26 at ¶ 59 & n.73 (Orszag Amended WDT).

For its part, SXM presented the Judges with two (and only two) ARPU options: use the ARPU number calculated by Professor Shapiro based on SXM's total subscription revenue [(redacted)]; or use the ARPU number calculated by Mr. Orszag based on the revenues reported by SXM to SoundExchange [(redacted)]. SXM PFF ¶¶ 97, 209-210, 325. But Professor Shapiro conceded that the revenue number used to calculate a percentage of revenue rate should match Gross Revenues as defined by the regulations, *e.g.*, SE PFF ¶ 1429; SE RPFF ¶ 209, and as the trial progressed he therefore relied on the [redacted] figure.[2] *See* 4/19/17 Tr. 212:11-12 (Shapiro) ("I used the ARPU of [redacted] here. That's the one that Mr. Orszag uses.").

Indeed, a demonstrative offered by SXM during the above-quoted oral testimony of Professor Shapiro[3] shows that Professor Shapiro calculated his *Web IV* benchmark rate during the trial using an implied per-subscriber rate of [redacted] as the numerator and an ARPU of [redacted] as the denominator, producing a rate of 9.6% of revenue. *See* Ex. A, Slide 3. Obviously, had the

[2] Although Professor Shapiro observed that the royalty ARPU number theoretically could change if the regulatory definition of Gross Revenue changed, *see* 4/19/17 Tr. 212:16-20 (Shapiro), he never offered any royalty ARPU number other than [redacted].

[3] An excerpt of SXM's demonstrative evidence used to aid the presentation of Professor Shapiro's oral testimony is attached as Exhibit A.

Judges adopted Professor Shapiro's proposed 9.6% rate, SXM could not plausibly object that its own economist's use of the allegedly wrong ARPU resulted in manifest injustice. That the Judges rejected Professor Shapiro's numerator of [redacted] does not change this conclusion. The Judges *accepted* Professor Shapiro's denominator, and SXM cannot now challenge the rate decision on this ground.

In short, SXM conceded that the ARPU calculation should be based on revenues as defined in the applicable regulations; SXM's principal economist affirmatively relied on the [redacted] ARPU figure to calculate a proposed rate; and no SXM witness supplied a royalty-based ARPU in his testimony other than the [redacted] used by the Judges in their Determination. The Judges therefore correctly concluded that the parties "reached agreement that, under the current definition of 'Gross Revenues,' the appropriate monthly ARPU is [redacted]." Determination at 72 n.141.

Despite the parties' obvious agreement on the ARPU number at trial, SXM argues for the first time in its Motion that [redacted]—not [redacted]—is the right ARPU. Mot. at 6-8. SXM's epiphany comes too late. Because SXM did not advance this alternative ARPU at any time up to or during closing argument, SXM's motion for rehearing should be denied. This conclusion is not altered by the fact that SXM offered five paragraphs in its post-trial Reply Findings[4] from which one might have calculated an alternative ARPU (or, indeed, many different alternative ARPU numbers) were one so inclined to do so. The record is rife with subscriber and revenue data, and a virtually unlimited number of alternative calculations are theoretically possible. It was incumbent on the parties, at least by the time of closing argument, to propose which numbers to use, and how to use them. SXM's economic expert did just that at trial, and offered up an ARPU number of [redacted]. A rehearing motion is too late to argue for a different number. *See Web IV*

[4] SXM RPFF ¶¶ 390-394; *see* Mot. at 5 (citing only these five paragraphs).

Denial at 4.

The reason for this rule is not difficult to discern. Based on the conceptual testimony presented at trial, and the data contained in the voluminous trial record, the Judges could perform an endless number of recalculations post-trial. For example, SXM ignores the fact that Professor Lys's written rebuttal testimony used updated SXM revenue figures from the first half of 2016 to calculate an ARPU of [ ]—down from [ ]. SE PFF ¶¶ 1419, 1432; Trial Ex. 42 ¶ 157 & Figure 19 (Lys WRT) (presenting updated revenue numbers from January through June 2016). If those corrected numbers are used, which "could easily be done," the percentage of revenue rate would increase from 15.49% [ ] to 15.54% [ ], effectively increasing the royalties owed to SoundExchange by over $11 million during this rate period.[5]

Similarly, based on conceptual testimony and data in the record, the Judges also could easily recalculate opportunity cost. The Judges originally calculated opportunity costs using data from Professor Hauser's "Modified Dhar" Survey, but they adjusted Professor Hauser's survey data to correct for an "anomaly" in certain responses regarding *on-demand* services, which "materially affected the survey results." Determination at 52-53. At trial, Professor Dhar unequivocally testified that this *identical* anomaly infected Professor Hauser's responses regarding *not-on-demand* services. Determination at 52 n.95; 5/8/17 Tr. 2821:18-2823:6 (Dhar). Professor Dhar explained conceptually why the Hauser survey understated the number of respondents who would purchase a new not-on-demand subscription, and SoundExchange provided the actual data

[5] Using [ ] instead of [ ] as the correct royalty-based ARPU figure would result in a 0.058% increase in the percentage of revenue rate. SXM reports in its Motion for Rehearing that its January to June 2016 "Gross Revenues for Calculating SX Royalty" is [ ]. Mot. at Ex. C. The product of these two numbers, multiplied by ten to extrapolate out for the five year rate period, is [ ] (assuming, unrealistically, that SXM's annual revenue does not continue to increase over the next five years).

quantifying the Hauser anomaly. 5/8/17 Tr. 2821:18-2823:6 (Dhar); Trial Ex. 293. A parallel calculation of how much the same survey error, applied to not-on-demand services, affected the creator compensation results "can easily be done," Mot. at 7, using Trial Ex. 293.[6] This calculation would result in an *increase* of the royalty rate because additional respondents would fall into the category of purchasing new not-on-demand services.

The point here is that an almost unlimited number of recalculations are possible based on economic concepts articulated by the experts and data placed in the record by the Participants. If the Judges were to perform one such recalculation, they should perform them all, including the recalculation of opportunity costs described above. But the rule adopted by the Judges in the past is that such calculations must be presented during the proceeding. As explained below, SXM had no good excuse for not doing so.

B. SXM Asks The Judges To Undo Its Failed Tactical Decision Not To Present A Different ARPU Number Earlier In The Proceeding.

The trial record includes no mention of the [ ] ARPU number that SXM now claims is so obviously correct that the use of any other ARPU number would constitute plain error. One therefore must ask: If [ ] is so clearly the only correct ARPU number, why didn't SXM calculate it for the Judges before their Determination? The answer cannot be that SXM recently discovered new evidence—SXM concedes that the data it uses in its Motion was available at trial. *See* Mot. at 6. Instead, SXM offers the excuse that it could not predict how the Judges might change the definition of Gross Revenues in their Determination, and thus SXM could not calculate ARPU based on the "new" definition of Gross Revenues. According to SXM, the [ ] ARPU figure "reflect[ed] the prevailing Gross Revenues definition through 2017," but "[t]he Judges did

[6] Because Professor Dhar's testimony was intended simply to illustrate defects in the Hauser survey, SoundExchange did not actually perform this calculation at trial.

in fact modify" the definition of Gross Revenues, and therefore the Judges erred in failing to also modify the ARPU number. Mot. at 3 (arguing that "in the event the Judges determined to modify the Gross Revenues definition," it was incumbent on the Judges to modify the [ ] ARPU number accordingly).

In reality, the Judges did not substantively modify the definition of Gross Revenues. Most importantly, as to whether SXM must include in Gross Revenues the revenue from non-music offerings that are not "offered for a separate charge," the Judges specifically concluded there was "no need to amend the text of the regulatory definition." Determination at 113-14. SXM is likewise incorrect when it asserts that the Judges have meaningfully altered the definition of Gross Revenues with respect to deduction of credit card fee expenses, which have never been excludable from the revenue base. SE PFF ¶¶ 1685-1689.

Anticipating this problem, SXM alternatively suggests that the Judges' Determination offers a new interpretation of the existing Gross Revenues definition. This too is untrue. The parties have long been engaged in a dispute with regard to SXM's exclusion from Gross Revenues of certain revenues supposedly attributable to the non-music content included in its bundled premium packages. That dispute ("the Underpayment Case") has been litigated in federal court since 2013, and after the District Court referred certain questions to the Judges, the Judges issued an Order addressing the revenue definition. This Order issued in January 2017—well before the trial began in this proceeding. In the January 2017 Order, the Judges confirmed that the definition of Gross Revenues does not allow SXM to attribute a portion of its bundled package revenue to non-music offerings and to exclude that amount from the royalty base—unless those non-music offerings are offered for a separate charge. No. 2006-1 CRB DSTRA (2007-2012) (Jan. 10, 2017). As for SXM's exclusion of certain transaction fees, SXM has long been on notice that such

exclusions are disputed. *See* Trial Ex. 101 at 8 (audit report observing that exclusion of transaction fee expenses was "improper"). Indeed, SXM's own controller flatly admitted at trial that some of these exclusions are improper. 5/17/17 Tr. 4393:6-4394:25 (Barry) (acknowledging that it was an "error" for SXM to deduct from gross revenues "credit card fees related to equipment revenue").

In short, there was no "new Gross Revenues definition" as SXM contends (Mot. at 3), and no new and hither-to unrevealed interpretation of that definition. SXM and Professor Shapiro offered *only* the [ ] royalty-based ARPU number, and did so with full knowledge of how the Judges interpreted the existing Gross Revenues definition. If SXM thought that the Judges' interpretation of the Gross Revenues definition required a different ARPU number, it should have said so (and calculated that number) before the Judges issued their Determination, not after. *See Web IV* Denial at 4 (where party was on notice that Judges could blend disparate benchmarks and failed to address that possibility, party's attempt to raise issues concerning blended rate on motion for rehearing was not timely).

Ultimately, the only error is SXM's. SXM chose not to make the calculation that it now presses on the Judges, instead embracing a royalty-based ARPU calculated using the revenue actually reported by SXM to SoundExchange in 2016. It is plain that SXM for purely tactical reasons did not offer the alternative ARPU number it now urges. SXM, which is still contesting the Underpayment Case, did not want to admit in this proceeding that it has systematically underreported its Gross Revenues. For purely tactical reasons, it therefore did not propose an ARPU number based on the existing Gross Revenues definition as interpreted in the Judges' January 2017 Order (or the audit report's observations regarding treatment of transaction fee expenses). Apparently regretting that tactical decision, SXM now attempts to reverse course, claiming the *Judges* are to blame for its litigation strategy and that the *Judges* erred by failing to

sua sponte make a calculation that SXM consciously declined to present. This is improper. "Rehearing is not an opportunity for a party to introduce new tactics, new theories, or new evidence." *Web IV* Denial at 6.

C. SXM Improperly Asks The Judges To Adopt Its Post-Hoc Recalculation Of ARPU, Even As It Argues In The Underpayment Case That Its New Revenue Number Is Wrong.

In the Underpayment Case, SoundExchange has argued that SXM has underreported certain revenues in the past. SXM's new ARPU number was calculated by including the revenues that SoundExchange has argued were underreported. But SXM continues to argue in the Underpayment Case that SXM was right about ARPU all along. After the Judges issued their Amended Restricted Ruling on Regulatory Interpretation (No. 2006-1 CRB DSTRA (2007-12) (Sept. 11, 2017)) in the Underpayment Case, SXM filed a Petition for Review of that determination to the D.C. Circuit (Docket No. 17-1278). SXM's instant Motion disingenuously dismisses this appeal as merely a backward-looking challenge to the interpretation of the Gross Revenues definition during the *SDARS I* and *SDARS II* license periods. *See* Mot. at 6 n.3. Because the definition of Gross Revenues has not changed, however, the appeal effectively challenges the interpretation of the Gross Revenues definition in the *SDARS III* license period as well. To this day, SXM apparently does not report to SoundExchange the revenues it now includes in its new ARPU calculation, and if SXM succeeds in its appeal before the D.C. Circuit, it never will.

D. SXM's Post-Hoc Recalculation of ARPU Requires Data Not In The Record.

SXM's Motion urges the Judges to calculate a new rate of 14.7%, derived from a recalculated ARPU of [ ]. Tellingly, though, SXM calculates two different ARPUs based on two sets of data. *See* Mot. at 6-7 (calculating [ ] ARPU based on September 2016 data and [ ] ARPU based on January – June 2016 data). That alone proves the obvious—ARPU

is a moving target, based on inputs that can and do fluctuate over time. Furthermore, in recalculating an ARPU derived from September 2016 revenue figures, SXM makes no attempt to match that number with its subscriber count from the same month. *See* Mot. at 6-7. As it turns out, there is no way for SXM to do so, as SXM's subscriber count from September 2016 is not in the record. SXM's supposedly "easy" calculation is not possible without reaching for evidence that was never admitted at trial.[7]

In any event, the time for debate over this and other alternative calculations has long since passed. The Judges' task here was not to undertake post determination every recalculation that the record would have allowed (never mind those that the record did not allow), but to arrive at a royalty-based ARPU that allowed them to calculate a rate. The ARPU number the Judges employed is a reasonable one, as the parties agreed at trial. *See* Part I.A *supra*.

E. The Judges' Royalty Rate Falls At The Absolute Floor Of The Range Of Reasonable Rates In This Proceeding.

Even if the Judges should have used a different ARPU number (they should not have), the resulting rate remains well within the range of reasonable rates in this proceeding. In setting a rate equal to opportunity cost, the Judges adopted a rate that represents the minimum that labels would accept in an unregulated market. As Professor Willig explained, record companies would in an unregulated market bargain with SXM "for a portion of the surplus value" generated by any agreement. Determination at 63. Professor Willig identified a surplus of $2.78 per month. However, the Judges found that the respective bargaining power of SXM and the record companies

[7] This is hardly trivial. SXM's subscriber base has steadily and consistently increased over time, a fact that it has touted in its SEC filings. *See* Trial Ex. 357 at 31 (noting "an increase of approximately 1.8 million subscribers, or 6%" in 2016). SXM should not be permitted to match an "average" subscriber count from an earlier time period to a revenue base from a later period, as this results in a conceptually and mathematically inaccurate ARPU.

was indeterminate and, accordingly, allocated all of this surplus to SXM. Determination at 64. Now, SXM claims that a purported error in its ARPU requires recalculation because the error inflates its effective per-subscriber royalty from [redacted] to [redacted]. In other words, SXM complains that the Judges' "clear error" reallocates [redacted] cents of the identified surplus to the record companies. This means that, as a result of the Judges' "mistake," record companies will now see 3%, rather than 0%, of the surplus generated by the compulsory license. Such a result falls well within the range of reasonable outcomes supported by the evidence in this proceeding.[8]

II. The Regulatory Language SXM Challenges Is Amply Supported By The Record.

SXM challenges the resolution of two disputed issues involving regulatory language, concerning the treatment of certain miscellaneous fee revenue and calculation of the direct license share, asserting that the Judges committed clear error by failing to provide sufficient explanation of their reasoning. Mot. at 9-10. However, the Judges reviewed an extensive record and lengthy proposed findings of fact and conclusions of law, in which SoundExchange provided ample basis for the proposed modification of the regulatory language addressing miscellaneous fee revenue, SE PFF ¶¶ 1685-1697; SE PCL ¶ 31; SE RPFF ¶¶ 477-479, and direct license share SE PFF ¶ 1745-1754; SE RPFF ¶¶ 467-471. This evidence and argument provides ample support for the Judges' resolution of this issue.

CONCLUSION

For the foregoing reasons, SoundExchange respectfully requests that the Judges deny SXM's Motion for Rehearing.

[8] The Judges took no issue with Professor Willig's approach, but adjusted the label's fallback value to [redacted] to reflect their view of the survey evidence. Determination at 60 n.144. Were the Judges to use the revised fallback value of [redacted] and SXM's new ARPU of [redacted], the result would be an even greater surplus. This would further reduce the percentage of surplus allocated to the record companies under the circumstances.

Respectfully submitted,

By /s David A. Handzo_____
David A. Handzo (DC Bar 384023)
Steven R. Englund (DC Bar 425613)
JENNER & BLOCK LLP
1099 New York Ave., N.W., Suite 900
Washington, D.C. 20001
(v) 202-639-6000
(f) 202-639-6066
dhandzo@jenner.com
senglund@jenner.com

Counsel for SoundExchange

Dated: January 18, 2018

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of: Determination of Royalty Rates and Terms for Transmission of Sound Recordings by Satellite Radio and "Preexisting" Subscription Services (SDARS III)	Docket No. 16-CRB-0001 SR/PSSR (2018-2022)

DECLARATION OF ALEX TREPP IN SUPPORT OF SOUNDEXCHANGE'S OPPOSITION TO SIRIUS XM'S MOTION FOR REHEARING

1. I am counsel for SoundExchange, Inc., the American Federation of Musicians of the United States and Canada ("AFM"), the Screen Actors Guild and American Federation of Television and Radio Artists ("SAG AFTRA"), the American Association of Independent Music ("A2IM"), Universal Music Group ("UMG"), Sony Music Entertainment ("SME"), Warner Music Group ("WMG"), and the Recording Industry Association of America ("RIAA") (collectively, "SoundExchange") in Docket No. 16-CRB-0001-SR/PSSR. I am authorized by SoundExchange to submit this declaration on its behalf and in support of SoundExchange's Opposition to Sirius XM's Motion for Rehearing.

2. Appended to the opposition as Exhibit A is a true and correct excerpt from the demonstrative that Sirius XM provided to the Judges and the Participants in connection with its direct examination of Carl Shapiro.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: January 18, 2018

Respectfully submitted,

By _____

Alex Trepp (D.C. Bar No. 1031036)
JENNER & BLOCK LLP
1099 New York Ave., N.W., Suite 900
Washington, D.C. 20001
(v) 202-639-6000
(f) 202-639-6066
echapuis@jenner.com

Counsel for SoundExchange, Inc., the Recording Industry Association of America, Sony Music Entertainment, Universal Music Group, Warner Music Group, the American Association of Independent Music, the American Federation of Musicians of the United States and Canada, and the Screen Actors Guild and American Federation of Television and Radio Artists

This exhibit is Restricted in its entirety

and is therefore omitted from the public version of this filing.

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of: Determination of Royalty Rates and Terms for Transmission of Sound Recordings by Satellite Radio and "Preexisting" Subscription Services (SDARS III)	Docket No. 16-CRB-0001 SR/PSSR (2018-2022)

DECLARATION OF EMILY L. CHAPUIS REGARDING RESTRICTED INFORMATION IN SOUNDEXCHANGE'S OPPOSITION TO SIRIUS XM'S MOTION FOR REHEARING

1. I am counsel for SoundExchange, Inc., the American Federation of Musicians of the United States and Canada ("AFM"), the Screen Actors Guild and American Federation of Television and Radio Artists ("SAG AFTRA"), the American Association of Independent Music ("A2IM"), Universal Music Group ("UMG"), Sony Music Entertainment ("SME"), Warner Music Group ("WMG"), and the Recording Industry Association of America ("RIAA") (collectively, "SoundExchange") in Docket No. 16-CRB-0001-SR/PSSR. I am authorized by SoundExchange to submit this declaration on its behalf.

2. I respectfully submit this declaration and the accompanying Redaction Log (Attachment 1) to comply with the Protective Order, dated June 15, 2016 (the "Protective Order"), which directs the parties to redact proposed restricted material in any filings with the Judges and to provide a log of the same redactions.

3. I have reviewed SoundExchange's Opposition to Sirius XM's Motion for Rehearing, being submitted simultaneous with this declaration, as well as the Redaction Log attached to this declaration. I have also reviewed the definitions and terms provided in the

Protective Order. Based on this review, I have determined to the best of my knowledge, information, and belief, that portions of SoundExchange's Opposition to the Motion for Rehearing (and accompanying exhibits) contain information that qualifies as protected material under the Protective Order, that should be treated as "confidential information" under 17 U.S.C. § 803(c)(5), and that the Copyright Royalty Judges have during the course of this proceeding found to be properly restricted under the Protective Order. This protected mateiral is identified in the attached Redaction Log, shaded in the Restricted version of SoundExchange's filed materials, and further described below.

4. The Protected Material that SoundExchange is submitting includes information that contains, reflects, or is sufficient to derive Sirius XM financial information that either SoundExchange, Sirius XM, or the Judges have reasonably determined would, if disclosed, either competitively disadvantage one or more of the participants, provide a competitive advantage to another participant, competitor, or entity, or interfere with the ability of one or more of the participants to obtain like information in the future.

5. As a result, SoundExchange respectfully submits that this information can and should be treated as "Protected Material." Such protection will prevent commercial and competitive harm that would result from disclosure and enable SoundExchange to provide the Copyright Royalty Judges with the most complete record possible on which to base its determination in this proceeding.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: January 18, 2018 Respectfully submitted,

By _____
Emily L. Chapuis (DC Bar 1017600)
JENNER & BLOCK LLP
1099 New York Ave., N.W., Suite 900
Washington, D.C. 20001
(v) 202-639-6000
(f) 202-639-6066
echapuis@jenner.com

Counsel for SoundExchange, Inc., the Recording Industry Association of America, Sony Music Entertainment, Universal Music Group, Warner Music Group, the American Association of Independent Music, the American Federation of Musicians of the United States and Canada, and the Screen Actors Guild and American Federation of Television and Radio Artists

Attachment 1

SoundExchange's Notice of Request To Redact Limited Portions SoundExchange's Opposition to Sirius XM's Motion for Rehearing

REDACTION LOG

Redaction	Description
Page 1	Restricted information regarding Sirius XM's ARPU and financial information. This information contains, reflects, or is sufficient to derive Sirius XM material deemed non-public financial information. Public disclosure could compromise Sirius XM's competitive position.
Page 2	Restricted information regarding Sirius XM's ARPU and financial information. This information contains, reflects, or is sufficient to derive Sirius XM material deemed non-public financial information. Public disclosure could compromise Sirius XM's competitive position.
Page 3	Restricted information regarding Sirius XM's ARPU and financial information. This information contains, reflects, or is sufficient to derive Sirius XM material deemed non-public financial information. Public disclosure could compromise Sirius XM's competitive position.
Page 4	Restricted information regarding Sirius XM's ARPU and financial information. This information contains, reflects, or is sufficient to derive Sirius XM material deemed non-public financial information. Public disclosure could compromise Sirius XM's competitive position.
Page 5	Restricted information regarding Sirius XM's ARPU. This information contains, reflects, or is sufficient to derive Sirius XM

	material deemed non-public financial information. Public disclosure could compromise Sirius XM's competitive position.
Page 6	Restricted information regarding Sirius XM's ARPU. This information contains, reflects, or is sufficient to derive Sirius XM material deemed non-public financial information. Public disclosure could compromise Sirius XM's competitive position.
Page 7	Restricted information regarding Sirius XM's ARPU. This information contains, reflects, or is sufficient to derive Sirius XM material deemed non-public financial information. Public disclosure could compromise Sirius XM's competitive position.
Page 8	Restricted information regarding Sirius XM's ARPU. This information contains, reflects, or is sufficient to derive Sirius XM material deemed non-public financial information. Public disclosure could compromise Sirius XM's competitive position.
Page 10	Restricted information regarding Sirius XM's ARPU and financial information. This information contains, reflects, or is sufficient to derive Sirius XM material deemed non-public financial information. Public disclosure could compromise Sirius XM's competitive position.
Exhibit A	Restricted information regarding Sirius XM's ARPU and financial information. This information contains, reflects, or is sufficient to derive Sirius XM material deemed non-public financial information. Public disclosure could compromise Sirius XM's competitive position.

CERTIFICATE OF SERVICE

I, David A. Handzo, do hereby certify that, on January 18, 2018, copies of the foregoing are being filed via eCRB, sent via electronic mail to all parties at the email addresses listed below, and sent in hard copy via overnight mail.

George Johnson DBA GEO MUSIC GROUP 23 Music Square East Suite 204 Nashville, TN 37203 George@georgejohnson.com *Pro Se*	
Paul Fakler John Sullivan Margaret Wheeler-Frothingham Miranda Perkins ARENT FOX, LLP 1675 Broadway New York, NY 10019-5874 Fax: 212-484-3990 Paul.Fakler@arentfox.com John.Sullivan@arentfox.com Margaret.Wheeler@arentfox.com Miranda.Perkins@arentfox.com Jackson Toof ARENT FOX, LLP 1717 K Street, N.W. Washington, DC 20006-5344 Fax: 202-857-6395 Jackson.Toof@arentfox.com Paula Calhoun MUSIC CHOICE 650 Dresher Road Horsham, PA 19044 Fax: 215-784-5886 PCalhoun@musicchoice.com *Counsel for Music Choice*	R. Bruce Rich Randi Singer Todd Larson David Yolkut Jacob Ebin Elizabeth Sperle Reed Collins WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, NY 10153 Fax: (212) 310-8007 Bruce.Rich@weil.com Randi.Singer@weil.com Todd.Larson@weil.com David.Yolkut@weil.com Jacob.Ebin@weil.com Elisabeth.Sperle@weil.com Reed.Collins@weil.com Patrick Donnelly SIRIUSXM RADIO INC. 1221 Avenue of Americas, 36th Floor New York, NY 10020 Fax: 212-584-5353 Patrick.Donnelly@siriusxm.com Cynthia Greer SIRIUSXM RADIO INC. 1500 Eckington Pl., NE Washington, DC 20002 Fax: 202-380-4592 Cynthia.Greer@siriusxm.com *Counsel for SiriusXM Radio, Inc.*

Rollin A. Ransom Peter I. Ostroff SIDLEY AUSTIN LLP 555 W. Fifth St., Suite 4000 Los Angeles, CA 90013 rransom@sidley.com postroff@sidley.com *Counsel for Sony Music Entertainment, Universal Music Group, and Warner Music Group*	

Dated: Jan. 18, 2018

s/ David A. Handzo
David A. Handzo

Certificate of Service

I hereby certify that on Thursday, January 18, 2018 I provided a true and correct copy of the Response in Opposition on Sirius XM's Motion for Rehearing-RESTRICTED to the following:

SAG-AFTRA, represented by David A. Handzo served via Electronic Service at dhandzo@jenner.com

American Federation of Musicians of the United Sta, represented by David A. Handzo served via Electronic Service at dhandzo@jenner.com

Sirius XM, represented by Elisabeth M Sperle served via Electronic Service at elisabeth.sperle@weil.com

Sony Music Entertainment, represented by David A. Handzo served via Electronic Service at dhandzo@jenner.com

Recording Industry Association of America, The, represented by David A. Handzo served via Electronic Service at dhandzo@jenner.com

Johnson, George, represented by George D Johnson served via Electronic Service at george@georgejohnson.com

American Association of Independent Music ("A2IM"), represented by David A. Handzo served via Electronic Service at dhandzo@jenner.com

Universal Music Group, represented by David A. Handzo served via Electronic Service at dhandzo@jenner.com

Warner Music Group, represented by David A. Handzo served via Electronic Service at dhandzo@jenner.com

Music Choice, represented by Eric Roman served via U.S. Mail

Signed: /s/ David A. Handzo